

ORDINANCE NO. _____

AN ORDINANCE GRANTING TO ONE GAS, INC, ACTING BY AND THROUGH ITS TEXAS GAS SERVICE COMPANY DIVISION, AND ITS SUCCESSORS AND ASSIGNS FOR A PERIOD OF TEN YEARS FROM APPROVAL AND ACCEPTANCE OF THIS ORDINANCE, A NON-EXCLUSIVE FRANCHISE AND RIGHT TO ENTER THE PUBLIC RIGHTS-OF-WAY AND PUBLIC EASEMENTS; AND REPEALING ORDINANCE NO. 20061005-023.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. The Council grants a franchise to Texas Gas Service Company, a division of ONE Gas, Inc., and its legal representatives, successors, lessees, and assigns, under the following terms and conditions:

SECTION 1. Definitions.

1.1. For the purpose of this Ordinance the following terms, phrases, words, and their derivatives shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, words in the singular number include the plural number, and the use of any gender shall be applicable to all genders whenever the sense requires. The words “shall” and “will” are mandatory and the word “may” is permissive. Words not defined shall be given their common and ordinary meaning.

1.2. “City” shall mean the City of Austin, Texas, a home rule municipal corporation in the State of Texas.

1.3. “City Parks” shall mean and include all areas dedicated or used as a public park, recreation area, scientific area, wildlife refuge, or historic site.

1.4. “Company” shall mean Texas Gas Service Company, a division of ONE Gas, Inc., a corporation organized and existing under and by virtue of the laws of the State of Oklahoma, authorized to transact and actually transacting business in the State of Texas, its legal representatives, successors, lessees, and assigns.

1.5. “Consumer” shall mean any person or organization within the corporate limits of the City of Austin receiving and using gas from the Company for his or her own appliances or equipment, whether or not the gas is billed directly to him or her, or to a second party. (For example, in the case of a rental unit where the utilities are part of the rent, the landlord is a Customer and the tenant is a Consumer.)

36 1.6. "Corporate limits" shall mean all areas lying within the City limits and full
37 purpose annexed adjacent areas, as they may change from time to time.

38 1.7. "Council" shall mean the governing body of the City of Austin.

39 1.8. "Customer" shall mean any natural person, corporation, partnership, firm,
40 association or unincorporated association, trust, municipality, public or private entity or
41 other legally recognized entity, whether for-profit or not-for-profit, located within the
42 municipal corporate limits of the City and serviced by the Company with the sale or
43 transportation of natural gas through any use of the Public Right-of-Way.

44 1.9. "Developer Incentives" shall mean any amounts paid to developers by the
45 Company that are not Developer Infrastructure Costs.

46 1.10. "Developer Infrastructure Costs" shall mean any reasonable amounts paid to
47 developers by the Company for installation of infrastructure necessary to providing
48 natural gas service, reasonable costs related to acquiring necessary rights-of-way, and
49 reasonable costs related to the management of facility installation activities.

50 1.11. "Director of Public Works" shall mean the Director of the Austin
51 Transportation and Public Works Department, or successor in function.

52 1.12. "Distribution System," or "Austin Distribution System" shall mean, in its
53 entirety, all pipes, equipment and other appurtenances and any portion thereof, used or
54 necessary for the transporting and delivery of gas by the Company to Customers and
55 Consumers within the corporate limits of the City.

56 1.13. "Emergency" is defined as sudden and unforeseeable damage or malfunction
57 of a portion of the Company's Austin Distribution System that is potentially a threat to
58 life, health, or property.

59 1.14. "End user" is defined as an individual or business, other than a business that
60 generates electricity for resale to wholesale or retail customers, that consumes natural gas
61 during the pursuit of its private or commercial purposes.

62 1.15. "Franchise" or "Franchise Ordinance" shall mean this Ordinance, and all
63 rights and obligations established herein.

64 1.16. "Franchise Fee(s)" shall mean the sum of fees to be paid to the City by the
65 Company as defined in Section 12 of this Ordinance.

66 1.17. "Gas" shall mean natural gas and any synthetic gas distributed by the
67 Company through its Distribution System.

68 1.18. "Gross Revenues" shall mean all revenue derived or received, directly or
69 indirectly, from the sale of gas to all classes of Customers and Consumers (excluding gas
70 sold to another gas utility in the City for resale to its customers within the City and the
71 gross revenues from gas sold to the City for its own use) within the corporate limits of
72 the City.

73 (A) "Gross Revenues" shall include:

74 (1) revenues derived from the following miscellaneous charges:

75 (a) charges to connect, disconnect, or reconnect gas within the City;

76 (b) charges to handle returned checks from Consumers within the City;

77 (c) such other service charges and charges as may, from time to time, be
78 authorized in the rates and charges on file with the City;

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80 (2) gross receipts from gas sales and gross receipts from gas transportation
81 within the City;

82 (3) amounts collected for State gross receipts tax;

83 (4) all revenues derived or received by the Company from the
84 transportation of Transport Gas through the Company's Distribution
85 System within the City to End users located within the City (excluding
86 any gas transported to another gas utility in the City for resale to its
87 customers within City);

88 (5) the value of Transport Gas transported by the Company for Transport
89 Customers, through the System of the Company located in the City's
90 Public Rights-of-Way ("Third Party Sales") (excluding the value of any
91 gas transported to another gas utility in the City for resale to its
92 customers within the City), with the value of such gas to be established
93 by utilizing either the purchase price (\$/MMbtu) of the Transport Gas
94 as reported to the Company by its Transport customers or a price equal
95 to the Houston Ship Channel Index of prices (\$/MMbtu) for large
96 packages of gas published each month in Inside FERC's Gas Market (or
97 a successor publication or another publication agreed upon by the City
98 and Company) as reasonably near the time that the transportation
99 service is performed; and

100 (6) receipts from sales of materials, appliances, or equipment.

101 (B) “Gross revenues” shall not include:

- 102 (1) the revenue of any person including, without limitation, an Affiliate, to
103 the extent that such revenue is also included in Gross Revenues of the
104 Company;
105 (2) sales taxes;
106 (3) any interest income earned by the Company;
107 (4) all monies received from the lease or sale of real or personal property,
108 provided, however, that this exclusion does not apply to the lease of
109 facilities within the City’s Public Rights-of-Way;
110 (5) receipts for maintenance of appliances, machinery, or equipment;
111 (6) receipts for compensation for damage to the Company’s property;
112 (7) contributions in aid of construction;
113 (8) revenues billed but not ultimately collected or received by the Company;
114 and
115 (9) receipts from any non-regulated utility or non-regulated services or
116 products.

117 (C) Securitization charges or other similar temporary or special rates or charges
118 authorized by the State of Texas, including Customer Rate Relief Charges and any future
119 charges recovered through state-approved bond issuances, are regulatory pass-through
120 items governed exclusively by state law and Railroad Commission of Texas order.
121 Accordingly, such securitization charges shall not be subject to any Franchise Fee,
122 program surcharge, City-imposed fee, or other charge under this Franchise, nor shall they
123 be included within Gross Revenues for Franchise Fee purposes.

124 1.19 “Public Easement” shall mean those public easements held, owned, or
125 controlled by the City, the terms, conditions, or limitations upon which are not
126 inconsistent with the construction or maintenance of a natural gas distribution system.

127 1.20 “Public Right(s)-of-Way” shall mean present and future Streets,
128 avenues, boulevards, parkways, lanes, Alleys, bridges, grounds, Sidewalks, parks,
129 easements, highways, public thoroughfares, and any other public places, if allowed
130 by law, within the municipal corporate limits of the City, whether dedicated or not as
131 they now exist or may be, hereafter, constructed, opened, laid out or extended within
132 the present limits of the City or in such territory as may, hereafter, be added to,

consolidated, or annexed to the City. City Parks are not included in this definition.

1.21 “Service Line” shall mean lines connected at or nearly at right angles to the Company’s mains and used to convey gas therefrom to the property line of Customers and/or Consumers.

1.22 “Sidewalk” is that portion of a street which is not improved and maintained for vehicular travel.

1.23 “Street” or “Alley” shall mean a publicly dedicated or maintained right-of-way, a portion of which is open to use by the public for vehicular travel.

1.24 “Transport Gas” or “transported gas” shall mean gas owned or controlled by a user or its designee (i.e., gas that is purchased or otherwise acquired by an End user from someone other than the Company) and delivered by such user or its designee to the Company at a point on the Company’s Distribution System, such point of delivery to be defined by the Company, and carried, delivered or transported through the Company’s system at a point of redelivery in the City by the Company to the user, for a fee. The terms and conditions of the transportation arrangement, including but not limited to the delivery point(s) of redelivery, measurement and location of title transfer, shall be as set forth in the contract entered into between the Company and the End user and/or the Company’s transportation tariffs on file with the Railroad Commission of Texas or other appropriate regulatory authority.

1.25 “Unmetered Gas” shall mean that gas being moved under pressure from the Company’s main lines to the Customers’ and/or Consumers’ meter.

SECTION 2. Granting of Franchise.

2.1. The City hereby grants to the Company a non-exclusive Franchise to maintain, construct, equip, extend, alter and otherwise establish and operate in the City, as now or hereafter constituted, works, systems, plants, lines and all related facilities (including those now in service) necessary or appropriate to sell, manufacture and store, distribute, transport, convey or otherwise conduct, serve, supply and furnish the inhabitants of the City and others, and to the City, whenever the City may desire to contract therefore, gas for light, fuel, power, heat and any and all other useful purposes, and the Company is hereby granted passage, right-of-way in, under, along and across, the right to occupy and use in any and all lawful way during the life of this Franchise any and all Public Rights-of-Way and Public Easements, now or may hereafter exist, and lawful purpose as herein mentioned. Nothing in this Franchise shall grant the Company the right to use or operate a gas distribution system owned by the City, absent a separate license agreement supported

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2.2. The Company shall be allowed to operate and maintain all lines existing on the effective date of this Franchise within City Parks, or then existing on land hereinafter designated or used as a City Park but shall not undertake a major replacement of such lines or lay new lines within said City Park. In the event that the Company has no feasible and prudent alternative to laying a new line or replacing a line which avoids a City Park, and the cost associated therewith exceeds the cost of laying said line in whole or in part within a City Park by 15 percent or more, then the Company may directly petition the Council for permission to cross City Park lands. The petition must include the Company's grounds for its assertion that there is no prudent or reasonable alternative to replacing or laying a line in a City Park. Within ninety (90) days of the filing of said petition, Council shall, in accordance with applicable law, including without limitation, Texas Parks and Wildlife Code Chapter 26, either permit the Company to use City Park land, or authorize the Company to, immediately upon completion of such project, adjust its rates for gas service to permit recovery of such total excess costs plus applicable financing charges at the then current prime rate over a period of three (3) years, by surcharge.

2.3. The construction, maintenance, and operation of the Company's Distribution System and property of the Company subject to this Franchise shall be subject to ordinances and regulations passed or approved by the City Council, including without limitation Title 14 – Use of Streets and Public Property, as amended, to the extent that such ordinances and regulations are not in conflict with the laws of the United States, the State of Texas, or the orders, rules or regulations of the Railroad Commission of Texas or other regulatory authority where such authorities have pre-emptive jurisdiction over the subject matter of such City ordinances or regulations.

2.4. The term of this Franchise shall expire ten years from the effective date of this Franchise Ordinance and shall include any period between October 16, 2026, and the effective date. Company shall provide written notice of the expiration of this Franchise Ordinance to Austin Financial Services (or successor in function) and the Director of Public Works no later than one year prior to the expiration of this Franchise Ordinance.

201 2.5. (A) The Company shall not transfer this Franchise, including as part of
202 a sale of stock or assets involving the Company and some or all of its divisions and
203 subsidiaries, without the written approval of the Council expressed by ordinance, and
204 such approval shall not be unreasonably withheld.

205 (1) Council may revoke this Franchise if the Company sells, transfers,
206 conveys, or otherwise disposes of its rights or interests under this
207 Franchise, or attempts to do so, without the Council's prior written
208 consent. All rights and interests of the Company shall cease if this
209 Franchise is revoked pursuant to this provision.

210 (2) A transfer in violation of this section is void.

211 (3) The Company may not assign this Franchise to evade fee payment.

212 (B) Nothing in this Franchise may be construed to grant, renew,
213 extend, or amend by estoppel or indirection any right, franchise or easement affecting
214 the Public Rights-of-Way, public places, or other real property. Only Council shall
215 have the power by ordinance to grant, renew, and extend a franchise to all service
216 providers placing or installing facilities or equipment in, on or over the Public Right-
217 of-Way and of all public utilities of every character operating within the City, and
218 with the consent of the franchise holder. In consideration of the foregoing, and the
219 authority of the City to impose reasonable regulations to ensure safe, efficient, and
220 continuous service to the public, the City and the Company have established the
221 following procedures regarding sale of the Distribution System and transfer of the
222 Franchise:

223 (1) In the event the Company expresses its intent by letter or contract to
224 sell its Distribution System located within the City, separate and
225 apart from other assets of the Company, then the City may, within 60
226 days of receiving such notice, provide notice to the Company of its
227 intent to exercise its option to commence purchasing the Company's
228 Austin Distribution System in the manner provided in Section 19 of
229 this Franchise. When the City has completed its purchase of the
230 Company's Austin Distribution System, the Company shall be
231 released from its obligations or liabilities under this Franchise.

232 (2) If the City does not elect to exercise its option to commence purchasing
233 the Company's Austin Distribution System under Section 19 of this
234 Franchise, then the City shall commence an investigation to determine if
235 the Franchise should be transferred to the entity to whom the Company
236 intends to sell the Austin Distribution System. The City's investigation

237 of the proposed purchaser must be completed within 30 days from the
238 date of receipt of notice from the Company. The Company shall provide
239 the City with any public information about the proposed purchaser of its
240 Distribution System that is within its possession, and that it may legally
241 provide, within seven consecutive days of a written request from the
242 City. Following completion of the investigation and the City's
243 determination of its desire to approve the transfer of the franchise to the
244 proposed purchaser, the City shall approve such transfer by ordinance,
245 under the same terms and conditions as this Franchise, within a time
246 period consistent with the requirements of the City Charter. Approval of
247 the transfer of this Franchise shall not be unreasonably withheld. The
248 Company shall be released from its obligations or liabilities under this
249 Franchise upon the transfer thereof to the new franchisee.

250 (3) In the event the City determines, for good cause, that it will not approve
251 the transfer of this Franchise to the proposed purchaser of the Austin
252 Distribution System, then the City must set forth its reasons for not
253 approving the transfer, and the Company shall not be released from its
254 obligations or liabilities under this Franchise until such time as the City
255 makes a determination not to extend or transfer the Franchise to a new
256 franchisee. When the City makes its decision not to extend or to transfer
257 the Franchise to the purchaser of the Company's Austin Distribution
258 System, the City will immediately begin negotiations with the Company
259 and the purchaser in an effort to address, in a timely manner, the City's
260 reasons for not extending the Franchise.

261 (4) Nothing in this Franchise shall be construed to limit the City's right
262 to reasonably refuse to transfer or extend the Franchise to the
263 proposed purchaser.

264 2.6. The separation of the utility and non-utility properties of the Company
265 into separate business organizations shall not operate to trigger the requirements of
266 this section.

267 **SECTION 3. Acceptance by Company.**

268 3.1. This Franchise shall be accepted by the Company in writing, which
269 acceptance shall be filed with the City within 60 days after the passage of this
270 Ordinance by Council, and when so accepted, this Ordinance shall be a contract duly
271 executed by and between the City and the Company.

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273 3.2. The City, by the granting of this Franchise, does not surrender or to any
274 extent lose, waive, imperil or lessen the lawful powers and rights now or hereinafter
275 vested in the City under the Constitution and Statutes of the State of Texas and under
276 the Charter of the City to regulate the rates, operations, and services of the Company;
277 and the Company, by its acceptance of this Franchise, agrees that all such lawful
278 regulatory power and rights as the same may from time to time be vested in the City
279 shall be in full force and effect and subject to the exercise thereof by the City at any
280 time and from time to time.

281 **SECTION 4. Service.**

282 4.1. Service shall be provided by means of the use of the Public Rights-of-
283 Way and Public Easements. If additional Public Easements are necessary, they shall
284 be the responsibility of the property owner requesting such service. All future
285 Company facilities within the Public Rights-of-Way shall be located in a space
286 designated by the City. The Company shall not place its facilities where the same
287 will interfere with any existing cable television, electric, water, street lights, fire
288 lanes, or communications lines, or obstruct or hinder in any manner the various
289 utilities serving the residents of the City.

290 4.2. The Company shall, as specified in its “Rules of Service,” as are now, or
291 as shall in the future be approved by Council, or other regulatory authority having
292 jurisdiction, furnish service without unreasonable discrimination to all areas of the
293 City. The Company shall not deny service, or otherwise discriminate against
294 applicants for service, Customers, or Consumers on the basis of race, religion,
295 national origin, sex, or sexual orientation. The Company, and its successors and
296 assigns, shall have the right to adopt and enforce its Rules of Service hereunder not
297 inconsistent with the law of this Franchise Ordinance.

298 4.3. The City may require the Company to maintain a Termination of Service
299 Policy in its Rules of Service that is identical to or consistent with that applied to
300 similarly situated City utility customers. The City shall, commensurate with approval
301 of any such change in the Company’s Rules of Service, provide for the recovery of
302 the prospective cost impact associated with the change or changes.

303 4.4. The Company shall maintain its property and equipment in good order
304 and condition consistent with the needs of the service to be rendered therefrom but
305 may not be compelled to extend its facilities beyond the Consumer’s property line.
306 It is recognized that the Company shall retain full title in and right to its personal
307 property whether or not same is incorporated in real estate. The Company shall, at
308 its own cost and without expense to any of its Customers or prospective Customers
309 wherever permanent improvements are located on the premises of such current or

310 prospective Customer and/or Consumer, construct and maintain a Service Line of
311 proper size and capacity from its main to the property line of each current or
312 prospective Customer and/or Consumer. The Company shall in every instance install
313 all necessary lines moving Unmetered Gas.

314 4.5. The Company's system and appurtenances shall be located, installed,
315 and maintained so that, to the extent reasonably practicable, the facilities do not
316 unreasonably interfere with any improvements the City may deem proper to make, or
317 unnecessarily obstruct the free use of the Public Rights-of-Way, Public Easements, or
318 public property.

319 4.6. Council may, in its discretion, pursuant to the authority of the City
320 Charter, require a management audit of the Company's operations in the City. The
321 costs of such audit shall be considered a reasonable and necessary expense for the
322 Company's cost of service.

323 4.7. By January 1, 2029, the Company agrees to implement, based on a new
324 tariff to be adopted by the City, a monthly assistance program for income-qualified
325 Customers and include a monthly charge on Customer bills dedicated to funding such
326 program.

327 4.8. The Company shall attend at least two meetings of the Resource
328 Management Commission (or successor board or commission) every calendar year.

329 4.9. Beginning in December 2026, the Company shall annually file with Austin
330 Financial Services a report addressing the Company's expected capital improvements
331 within the City for the upcoming year. The Company shall be solely responsible for
332 identifying confidential or proprietary information in such annual reports. The City
333 agrees to maintain the confidentiality of any confidential or proprietary information as
334 designated by the Company to the extent allowed by law.

335 4.10. To improve public engagement and ensure transparent information flow
336 between the Company and Customers, the Company shall organize and host no fewer
337 than two public Customer meetings within 45 days of filing of an application for any
338 proposed base rate increase or Interim Rate Adjustment (or "GRIP") applicable to
339 Customers during the term of the Franchise Ordinance. Company shall issue public
340 notice of such public Customer meetings to City staff and each individual Customer
341 impacted by the proposed rate increase no later than 10 days before the meeting date.
342 Company representatives must be present at each public Customer meeting to address
343 Customer concerns and questions. The Company must provide information at each
344 public Customer meeting to explain the cause(s) of the rate increase at issue.

345 **SECTION 5. Use of Public Rights-of-Way and Public Easements.**

346 5.1. The Company is hereby authorized, licensed and empowered to do any
347 and all things necessary and proper to be done and performed in executing the
348 powers and utilizing the privileges herein mentioned and granted by this Franchise,
349 provided the same do not conflict with existing water pipes, sewers, electric power
350 lines, telephone lines, cable television lines and other authorized installations, and
351 provided that all work done in said Public Easements and Public Rights-of-Way by
352 the Company shall be done with the utmost diligence and without unnecessary
353 inconvenience to the public or individuals. Further, the Company's use of the
354 foregoing shall be in accordance with all City Ordinances, the City's Standards
355 Manual, and the City's Standard Specifications Manual, as amended.

356 5.2. The main lines of the Company shall be laid in Public Rights-of-Way
357 and other Public Easements, and when in Streets, Alleys, and avenues, shall be laid
358 parallel with the curb line thereof, or in such locations as shall be most practical. The
359 Company's main lines shall be installed or replaced at depths which comply with all
360 applicable state and federal rules and regulations establishing minimum safety
361 standards for the design, construction, maintenance and operation of pipelines,
362 provided, however, that from the effective date of this Agreement, in no case shall
363 any new or relocated main line be laid less than 24 inches below the established
364 street grade at the time of installation, without permission of the Director of Public
365 Works.

366 5.3. When the Company shall desire to lay any mains or new Service Lines
367 hereunder, and before commencing its construction work for mains or new Service
368 Lines, it shall submit to the Director of Public Works or other proper authority an
369 application for permit, and a map or plan showing the Public Rights-of-Way and
370 other Public Easements wherein it proposes to construct its facilities. The Director of
371 Public Works or other proper authority shall respond in writing to the Company
372 within 10 calendar days of the Company's submission either approving or rejecting
373 the plan and, if a rejection, listing the reasons for such rejection. Actual approval by
374 the Director of Public Works or other proper authority shall constitute a permit to the
375 Company for the opening of all of the Public Rights-of-Way and other public places
376 shown on the map or plan, and for the construction or laying of the main lines and
377 other facilities or equipment by the Company. The Company shall not be required to
378 secure a permit in advance of excavation in the event of an Emergency, as defined
379 herein, provided that the Company shall file with the Director of Public Works no
380 later than 10 days after the last day of such an Emergency, the information that the
381 Company would have been required to pre-file had there not been an Emergency and
382 detailed information that describes the circumstances of said Emergency.

383 5.4. In furtherance of the public interest in safety, health, and public welfare and
384 to facilitate the safe management of the Public Rights-of-Way, the construction,
385 expansion, reconstruction, excavation, use, maintenance and operation of the
386 Company's Distribution System and property is subject to all generally applicable City
387 requirements. In addition to any other City requirements, the Company shall provide
388 the City's Office of Right of Way Management, or such other officials as the City may
389 designate, construction plans and maps showing the routing of any new construction and
390 construction plans, 45 days prior to the commencement of construction which involves
391 an alteration to the surface or beneath the surface of the Public Right-of-Way, to the
392 extent generally required. The Company shall not begin construction until the plans and
393 drawings have been approved in writing by the Office of Right of Way Management; this
394 approval shall not be unreasonably delayed. The Company shall participate in the Austin
395 Utility Location Coordination Committee ("AULCC") meetings and coordinate new
396 construction with the AULCC. The Company's facilities shall bear the identification
397 marks established by the AULCC if the facilities are installed after the AULCC
398 establishes identification marks.

399 5.5. The Company is responsible for excavation restoration and ongoing repairs.
400 The Company must clearly mark all pavement cuts to distinguish the Company's work
401 from other utilities in the Public Right-of-Way. Company excavation repairs and
402 restoration of excavation sites in the Public Right-of-Way must comply with all
403 requirements under the City's Code of Ordinances, the City's Standards Manual, and
404 the City's Standard Specifications Manual in effect at the time of the applicable repair
405 or restoration.

406 5.6. Any damage to City-owned utility infrastructure that occurs as a result of the
407 Company's operations in the Public Rights-of-Way or Public Easements shall be repaired
408 solely at the Company's expense. If Company's operations within the Public Rights-of-
409 Way damage or disrupt any existing traffic control devices on the pavement or curbside
410 (including, but not limited to, lane lines, crosswalks, arrows, and traffic signage) or other
411 assets (including, but not limited to, speed cushions/humps/tables, concrete
412 medians/circulate intersections/crossings islands, curb extensions/bulb-outs, or
413 bicycle/pedestrian facilities), the Company is responsible for restoring such markings and
414 assets to pre-excavation conditions as soon as possible under the circumstances. The
415 Company is responsible for denoting traffic control devices and assets within the extents
416 of excavation on submitted plans, including City standard details for applicable traffic
417 control devices and assets, for the City's review and approval prior to the start of work.
418 All temporary patches installed by the Company for compliance with the American
419 Disabilities Act must receive a permanent replacement within 90 days from the date the
420 Company installs the temporary patch.

421 5.7. If a meter is to be installed or relocated within the Public Right-of-Way or
422 Public Easement, and where it is safe to do so, Company shall submit to the City
423 aesthetics of the meter placement, when reasonable. In installation of all meters,
424 Company must comply with the City's placement requirements. If the City requires a
425 meter upgrade, the Company shall comply so long as the costs incurred by the Company
426 to change the meter and/or associated piping or equipment are reasonable and do not
427 exceed the cost of the Company's initial plan, in whole or in part, by 15 percent or
428 more.

429 5.8. In the event of a conflict between the provisions of this Section 5 and those
430 of City Code Chapter 14-11 or other ordinance of general applicability that regulates the
431 use of the Public Right-of-Way, the provisions of the City Code shall govern.

432 **SECTION 6. Work by the City and Others.**

433 6.1 City reserves the right to lay, and permit to be laid, sewer, cable television,
434 water, telephone and other pipelines, cables and conduits, and to perform and permit to
435 be performed any underground or overhead work that may be necessary or proper in,
436 across, along, over, or under any Public Right-of-Way, Public Easement, or public place
437 occupied by the Company. The City shall be liable to the Company only for any damage
438 to the facilities of the Company if caused by the negligence of the City or its employees.

439 6.2 If the City requires the Company to adapt or conform its Distribution
440 System, or in any way alter, relocate or change its property to enable any person, firm,
441 corporation or entity (whether public or private), other than the City, to use the Public
442 Rights-of-Way, the Company shall be entitled to reimbursement from the person, firm,
443 corporation or entity desiring or occasioning such change for any and all loss, cost or
444 expense occasioned thereby.

445 **SECTION 7. Changes for Governmental Purposes.**

446 7.1. If, during the period of this Franchise, the City shall elect to alter or
447 change the grade or alignment of any City Public Right-of-Way or other Public
448 Easement, or any water pipe, wastewater pipe, or any overhead or underground
449 structure within City Public Right-of-Way, so as to conflict with the facilities of the
450 Company, the Company shall remove or relocate, as necessary, all of its facilities at
451 its own expense. Schedules for this work shall be developed by designated
452 representatives of the Company and the City. If such representatives cannot agree
453 on the schedule, the Director of Public Works or his or her designee, after consultation
454 with the Company, shall establish a schedule that allows for reasonable time for
455 budgeting and resource allocation as well as incorporates City permitting times.
456 This schedule shall provide for a minimum of 30 days to exist between the time the

457 schedule is furnished to the Company and the time that any specific work to
458 commence by the Company covered in the schedule is to begin. The Company's
459 duty to relocate shall also apply to any abandoned facilities that are determined by the
460 City to be inconsistent with water, sewer, drainage, traffic or pavement industry
461 standard safe operating practices for existing facilities or determined by the Company to
462 be inconsistent with gas distribution industry standard safe operating practices for
463 existing facilities.

464 7.2. Whenever any such project is funded, in whole or in part, with federal or
465 state highway monies, if the federal or state government provides compensation for
466 utility adjustments, the City shall request that compensation be provided to the
467 Company by the funding authority. If the City receives such requested utility
468 adjustment compensation, it shall deliver same to the Company.

469 **SECTION 8. Company Rules and Regulations, Jurisdiction.**

470 8.1. The Company and its successors and assigns shall have the right to adopt
471 and enforce Rules of Service for service hereunder not inconsistent with the law or
472 this Franchise and shall be subject to the original jurisdiction of the City or other
473 regulatory authorities having jurisdiction from time to time.

474 8.2. This Franchise shall be governed in accordance with and construed by
475 the laws of the State of Texas. If there is a dispute between the City and the
476 Company on any issue arising under this Franchise Ordinance or the operation of the
477 Franchise created thereunder, other than where an appeal is subject to the Texas Gas
478 Utility Regulatory Act or subsequent regulatory authority, as it may be amended
479 from time to time, the parties agree that trial of such action shall be vested
480 exclusively in the Travis County State District Courts or in the United States District
481 Court for the Western District of Texas.

482 **SECTION 9. Curtailments.**

483 9.1. The Company agrees to actively seek to provide the best mix of gas
484 supply at the lowest prices consistent with its duty to provide safe and reliable
485 services to its Customers. The Company shall make an annual report to the City of
486 its gas supply activities relating to the City of Austin, and in addition shall provide
487 such a report upon the circumstances in which it is required to undergo a
488 management audit as set out in this Franchise.

489 9.2. To the extent not inconsistent with the curtailment requirements of the
490 Railroad Commission of Texas and the Company's filed tariffs and rate schedules,
491 the Company shall exercise its best efforts under reasonable terms and conditions, to

492 maintain an adequate supply of natural gas to meet the requirements of residential
493 Consumers, hospitals, and essential governmental services within the municipal limits
494 of the City of Austin.

495 9.3. The Company's undertakings shall be subject to its ability, by use of due
496 diligence and normal business methods, to obtain and place in service the necessary
497 materials and facilities. Moreover, the Company shall be excused from failure or
498 delay in performing such obligations if and to the extent occasioned by an act of
499 God, fire, explosion, flood, act of a public enemy, contagion or contamination
500 hazardous to human life or health, legal restraints, labor difficulties, material
501 shortages, interruption or deficiency of gas supply not attributable to default of the
502 Company or, without limitations, any other cause or combination of causes not
503 reasonably within the Company's ability to anticipate or control. The Company shall
504 notify the City promptly and in no case less than 30 days of its intent to utilize this
505 provision of this Franchise. In any case of shortage of gas supply due to any cause
506 where the Company, by reason thereof, is unable to furnish gas for all purposes,
507 preference shall be as specified in the curtailment procedure set forth in its Rules of
508 Service.

509 **SECTION 10. Leak Detection and Repair.**

510 10.1 Throughout the term of this Franchise, the Company shall continue to
511 employ and update its use of industry-leading advance leak detection and repair
512 ("LDAR") technologies.

513 10.2 Beginning in December 2026, the Company will submit annual reports
514 to the Austin Transportation and Public Works Department detailing the performance
515 of its LDAR programs within the City. At a minimum, each annual report must
516 contain (1) an overview of the Company's LDAR practices and the technologies
517 employed within the City, (2) a statement of leak detection survey frequency within
518 the City, (3) a description of the Company's mitigation strategies for leaks within the
519 City, (4) the average response time for gas emergencies within the City, and (5) the
520 average leak repair time within the City. The Company will also include a copy of its
521 annual PS – 95 Report submitted to the Railroad Commission of Texas. If at any
522 time during the term of this Franchise, the Company implements technology capable
523 of identifying fugitive methane emissions and fugitive methane emissions rates
524 within the City (rather than on a statewide level), the Company must begin including
525 such information in the annual reports submitted to the City under this section.

527 **SECTION 11. Annexations and Disannexations by City.**

528 The City shall notify the Company in writing of the annexation or disannexation
529 of any territory by the City. Upon receipt of notice of annexation from the City, the
530 Company shall have 60 days to begin collecting and paying the Franchise Fee for
531 any revenues received from the Company's Customers and/or Consumers residing
532 in the newly annexed territories.

533 **SECTION 12. Fees, Rates.**

534 12.1 Since the Public Rights-of-Way and Public Easements to be used by the
535 Company in the operation of its system within the boundaries of the City are valuable
536 public properties acquired and maintained by the City at great expense to its
537 taxpayers, and since the grant to the Company of the use of said Public Rights-of-
538 Way and Public Easements is a valuable property right without which the Company
539 would be required to invest substantial capital in right-of-way costs and acquisitions,
540 and since the City will incur costs in regulating and administering the Franchise, the
541 Company shall, throughout the term of this Franchise, pay the City the aggregate
542 sum of five percent of the Company's total Gross Revenues, per billing period.

543 12.2 The Franchise Fee shall be paid quarterly to the City on or before the
544 15th day of the second month following the end of the quarterly period for which
545 said payment is due. The Franchise Fee payment shall be made via electronic funds
546 transfer. At the time said payment is made, the Company shall deliver to Austin
547 Financial Services or successor in function, a summary statement indicating the
548 derivation and calculation of such electronic funds transfer payment. For purposes of
549 determining such fee, the books of the Company shall at all reasonable times be
550 subject to inspection by the duly authorized representatives of the City, subject to the
551 City providing 20 days' written notice to the Company of its intent to conduct such
552 inspection. The inspection and audit shall be limited to the four years immediately
553 preceding the date of the written notice. The expense of all audits and reviews of all
554 Company records for the purpose of the operation of this Franchise shall be
555 considered a reasonable and necessary expense for the Company's cost of service.

556 12.3 In the event any quarterly payment is made after 5:00 p.m. on the date
557 due, the Company shall pay to the City a late payment charge of the greater of:

- 558 (a) \$100, or
- 559 (b) Simple interest at 10 percent annual percentage rate of the total
560 amount past due.

561 12.4 The Franchise Fee shall be in lieu of any and all other rentals or
562 compensation or Franchise, license, privilege, instrument, occupation, excise or
563 revenue taxes or fees and all other exactions or charges (except ad valorem property
564 taxes, special assessments for local improvements, and such other charges imposed
565 uniformly upon persons, firms or corporations then engaged in business with the
566 City), or permits upon or relating to the business, revenue, Franchise, gas lines,
567 installations and systems, conduits, storage tanks, pipes, fixtures and other facilities
568 of the Company and all other property of the Company and its activities, or any part
569 thereof, in the City which relate to the operations of the Company's gas Distribution
570 System.

571 12.5 Said Franchise Fees shall accrue to the City only so long as the City, after
572 notice and the opportunity to cure in the instance of disagreement between the parties,
573 does not charge, levy, require or collect any other rentals or compensation of franchise,
574 license, privilege, instrument, occupation, inspection, excise or revenue taxes, fees or
575 other exactions or charges relating to the operation of the Company's gas Distribution
576 System in the City as aforesaid.

577 12.4 The Franchise Fees defined in this Franchise Ordinance are a reasonable
578 and necessary operating expense of Company and may be fully recovered by
579 Company by collection from its Customers in the City, whether asserted
580 retroactively or prospectively, by revising its rate schedules, assessing an additional
581 charge to the monthly bills of its Customers within the City, adding an additional
582 charge to the Company's purchased gas adjustment clause for the City or in any
583 legal manner approved by the City.

584 12.5 Council hereby expressly reserves the right, power, and authority to fully
585 regulate and fix the rates and charges for the services of the Company to its
586 Consumers as provided by State law and the City Charter.

587 (A) The Company may from time to time propose changes in its
588 general rates by filing an application with the City Secretary for the consideration of
589 Council. Within a reasonable time consistent with law, Council shall afford the
590 Company a fair hearing with reference to the application and shall either approve or
591 disapprove the proposed changes or make such order as may be reasonable.

592 (B) In order to ascertain any and all facts, Council or its designate shall
593 have full power and authority to inspect, or cause to be inspected, the books of the
594 Company, and to inventory and appraise, or cause to be inventoried and appraised,
595 the property of the Company, and to compel the attendance of witnesses and the
596 production of books and records.

597 (C) The City shall not allow as to rates or services an unreasonable
598 preference or advantage to anyone within a service classification, nor allow the
599 Company to subject anyone within a service classification to any unreasonable
600 prejudice or discrimination. Neither shall the Company grant, directly or indirectly,
601 any rebate, in the form of money or any other thing of value, to any Consumer in
602 order to circumvent the rate schedules filed with the City pursuant to this Franchise
603 Ordinance.

604 (D) Council has authority to require the Company to allocate costs of
605 facilities, revenues, expenses, taxes, and reserves between the City and other
606 municipalities or unincorporated areas, consistent with State Law.

607 12.6 Company shall follow its approved Rules of Service (tariffs) and all
608 applicable Railroad Commission of Texas orders related to the recovery from Customers
609 of any Developer Incentives for contracts executed by Company on or after June 30,
610 2024, or for contracts amended or extended on or after June 30, 2024. Company's
611 Developer Incentives are not eligible for inclusion in an energy-conservation program
612 adopted pursuant to 16 Texas Administrative Code Section 7.480.

613 12.7 The Company agrees that the City may, at any time during the term of
614 this Franchise, at the expense of the Company, obtain expert assistance and advice in
615 determining fair, just, and reasonable rates to be charged by the Company to its
616 Consumers in the corporate limits of the City, and in determining the extent to which
617 the Company is complying with the terms and conditions of this Ordinance. The
618 Company agrees to pay reasonable expenses in connection therewith, or reimburse
619 the City for the same, which expense the Company shall be entitled to recover
620 through rates and tariffs.

621 12.8 The Company shall file annually with the City's Chief Financial
622 Officer, or designee, no later than four (4) months after the end of the Company's
623 fiscal year, annual audited statements of the Company. The certified public
624 accountant preparing the statement shall certify that the statement is in
625 accordance with applicable generally accepted accounting principles.

626 12.9 If Company should at any time after the effective date of this Franchise
627 Ordinance agree to a new municipal franchise ordinance, or renew an existing
628 municipal franchise ordinance, with another municipality, which municipal franchise
629 ordinance determines the franchise fee owed to that municipality for the use of its
630 public right-of-way in a manner that, if applied to the City, would result in a
631 Franchise Fee greater than the amount otherwise due City under Section 12.1 of this
632 Ordinance, then the franchise fee to be paid by Company to City pursuant to this
633 Franchise Ordinance may, at the election of the City, be increased so that the amount

634 due and to be paid is equal to the amount that would be due and payable to City were
635 the franchise fee provisions of that other franchise ordinance applied to City.

636 **SECTION 13. Indemnity.**

637 The Company shall indemnify, defend, and save harmless the City, its agents,
638 officers and employees, against and from any and all claims by or on behalf of any
639 person, firm, corporation, or other entity, arising from the Company's construction,
640 operation or management of its transmission or Distribution System, or arising from
641 any act of negligence of the Company, or any of its agents, contractors, servants,
642 employees, or licenses, including a breach of the Company's obligation under this
643 Franchise to provide the City information contained in written reports that is free of
644 material misrepresentation, and from and against all costs, counsel fees, expenses
645 and liabilities incurred in or about any such claim or proceeding brought thereon;
646 except that the indemnity provided for in this paragraph shall not apply to any
647 liability resulting from the negligence or intentional acts or omissions of the City, its
648 officers and employees. In the event a claim allegedly arises from the concurrent
649 fault of both the City and the Company, the Company must indemnify the City to
650 the full proportionate extent to which the Company is found to be responsible. The
651 City shall promptly notify the Company of any claim or cause of action which may
652 be asserted against the City relating to or covering any matter against which the
653 Company has agreed, as set forth above, to indemnify, defend and save harmless the
654 City. The Company reserves the right, but not the obligation, to employ such
655 attorneys, expert witnesses, and consultants as it deems necessary to defend against
656 the claim or cause of action. The Company shall have the right to investigate, defend,
657 and compromise all claims referred to herein after conferring with the Austin City
658 Attorney's Office. It is understood that it is not the intention of either the City or the
659 Company to create any liability, right or claim for the benefit of third parties and
660 this Franchise Ordinance is intended and shall be construed for the sole benefit of
661 the City and the Company.

662 **SECTION 14. Insurance.**

663 The Company will maintain a level of insurance in consideration of the
664 Company's obligations and risks undertaken pursuant to this Franchise that is
665 consistent with best industry practices. Such insurance may be in the form of self-
666 insurance to the extent permitted by applicable law, under an approved formal plan
667 of self-insurance maintained by the Company in accordance with sound accounting
668 and risk-management practices. A current certificate shall be provided to the City
669 upon execution of this Franchise and upon any modification in coverage thereafter.
670 The Company shall be responsible for paying all self-insurance retention and

671 insurance deductibles associated with the payment of any claim arising from
672 activities conducted under this Franchise.

673 **SECTION 15. Equal Employment Opportunity.**

674 15.1 The Company shall adhere to equal employment practices within the
675 City of Austin, and to all federal, state, and local rules and laws pertaining to
676 discrimination, equal employment, and affirmative action.

677 15.2 The Company shall provide equal employment opportunity to minorities,
678 women and the physically disabled at all levels and in all phases of operation. In
679 addition, the Company shall promulgate an affirmative action policy which shall
680 cover, in addition to employment: training, the granting of internships, purchasing,
681 and the employment of subcontractors.

682 15.3 Company shall make all reasonable efforts to comply with its affirmative
683 action commitments.

684 **SECTION 16. Forfeiture and Termination.**

685 16.1 In addition to all other rights and powers retained by the City under this
686 Franchise or otherwise, the City reserves the right to declare this Franchise forfeited
687 and to terminate the Franchise and all rights and privileges of the Company
688 hereunder in the event of a material breach of its terms and conditions. A material
689 breach by the Company shall include, but shall not be limited to, the following:

690 (A) Failure on more than three (3) occasions to pay when due the
691 Franchise Fee prescribed by Section 12 hereof;

692 (B) Failure to pay a single installment of the Franchise Fee in full
693 (including late payment charges in accordance with §12.3) within 30 days after the
694 due date, in the absence of a bona fide dispute communicated to the City in writing
695 on or before the due date of the applicable Franchise Fee installment;

696 (C) Failure to materially comply with any provision in this Franchise
697 Ordinance;

698 (D) Material misrepresentation of fact in the application for or
699 negotiation of the Franchise; and

700 (E) Conviction of any director, officer, employee, or agent of the
701 Company of the offense of bribery or fraud connected with or resulting from the
702 awarding of this Franchise to the Company.

703 16.2 The foregoing shall not constitute a material breach if the violation
704 occurs without fault of the Company or of its employees or occurs as a result of
705 circumstances beyond its control. Company shall not be excused by mere
706 economic hardship or by malfeasance or the malfeasance of its directors, officers, or
707 employees.

708 16.3 In order for the City to declare forfeiture, the City shall make a written
709 demand that the Company comply with any such provision, rule, order, or
710 determination under or pursuant to this Franchise. If the violation by the Company
711 continues for a period of 45 days following such written demand without written
712 proof that corrective action has been taken or is being actively and expeditiously
713 pursued to completion, Council may take under consideration the issue of
714 termination of the Franchise. The City shall cause to be served upon the Company, at
715 least 20 days prior to the date of such a Council meeting, a written notice of intent to
716 request such termination and the time and place of the meeting. Public notice shall be
717 given of the meeting and issue which the Council is to consider.

718 16.4 The Council shall hear and consider the issue, shall hear any person
719 interested therein, and shall determine, in its discretion, whether or not any violation
720 by the Company has occurred.

721 16.5 If the Council shall determine that the violation by the Company was
722 the fault of the Company and within its control, the Council may declare the
723 Franchise of the Company forfeited and terminated, or the Council may grant to
724 Company a period of time for compliance. Nothing herein shall be deemed a waiver
725 of the Company's right to pursue all available legal remedies.

726 **SECTION 17. Change of Control.**

727 Upon the foreclosure or other judicial sale of all or a substantial part of the
728 Distribution System within the corporate limits of the City, or upon the leasing of all
729 or a substantial part of the Distribution System, the Company shall notify the City
730 of such fact, and such notification shall be treated as a notification that a change in
731 control of the Company has taken place and the provisions of this Franchise
732 governing the consent of the Council to such changes in control of the Company
733 shall apply.

734 **SECTION 18. Receivership and Bankruptcy.**

735 The Council shall have the right to cancel this Franchise 120 days after the
736 appointment of a receiver or trustee to take over and conduct the business of the
737 Company, whether in receivership, reorganization, bankruptcy or other action in

738 proceeding, whether voluntary or involuntary, unless such receivership or
739 trusteeship shall have been vacated prior to the expiration of said 120 days, or
740 unless:

- 741 (A) Within 120 days after his or her election or appointment, such
742 receiver or trustee shall have fully complied with all the provisions of
743 this Franchise and remedied all defaults thereunder; or
744
745 (B) Such receiver or trustee, within 120 days, shall have executed an
746 agreement, duly approved by the court having jurisdiction, whereby the
747 receiver or trustee assumes and agrees to be bound by each and every
748 provision of this Franchise granted to the Company.

749 **SECTION 19. Purchase.**

750 19.1 The City shall have the option to purchase the Company's Distribution
751 System within the City of Austin at any time during the term of this
752 Franchise.

753 19.2 The following are conditions precedent to the exercise of City's option to
754 purchase:

- 755 (A) The City must provide the Company with written notice of the
756 City's intention to exercise its option to purchase the Company's
757 property devoted to the Distribution System.
- 758 (B) Within 90 days after receipt of the notice of intention to exercise
759 its option, the Company shall make a written offer ("Offer")
760 stating the cash price at which the Company is willing to close the
761 purchase and sale of the Distribution System. Within 90 days of
762 the receipt of the Offer, the City must give written notice to the
763 Company (a) that the Offer is rejected and the appraisal procedures
764 set forth in Section 19.3 are to be initiated, (b) that the City agrees
765 to purchase the Distribution System for cash at the cash price
766 stated in the Offer, or (c) that the City withdraws its notice of intent
767 to exercise its purchase option.
- 768 (C) If the City agrees to purchase the Distribution System at the price
769 stated in Company's Offer, the parties shall negotiate the terms of
770 a definitive purchase agreement in good faith. Closing shall take
771 place within 30 days after satisfaction of all conditions precedent
772 to the sale in the purchase agreement are satisfied, or at such other

773 time upon which the parties may mutually agree.

774 19.3 Upon initiation of the appraisal procedures set forth in this section, the
775 Company and the City shall each appoint an appraiser within 30 days after delivery
776 of the written election for appraisal under Section 19.2. The appraisers shall be
777 experienced in the evaluation of gas distribution systems, and neither appraiser shall
778 have worked for either the City or the Company within five (5) years of the date of
779 appointment or be otherwise disqualified from rendering independent judgment. The
780 City and the Company shall each immediately provide the name, mailing address
781 and telephone number of its appointee to the other party. The appointed appraisers
782 shall agree on the appointment of a third appraiser with like qualifications to be
783 engaged if required pursuant Section 19.4 below.

784 (A) Within 30 days after appointment of the appraisers and after no
785 less than fifteen (15) days' written notice to the parties, the
786 appraisers shall commence their determination of the appraisal
787 value of the Distribution System.

788 (B) Within 90 days after the commencement of the appraisal process,
789 the appraisers shall each file with the City and the Company a
790 written proposed decision on the appraised value, including
791 detailed written findings explaining the basis of the proposed
792 valuation. The factors for the appraisers to consider in arriving at
793 a fair market value for the Company's facilities shall include, but
794 not be limited to, the following:

795 (1) the book value of the assets constituting the Company's
796 Distribution System within the City of Austin;

797 (2) the age and condition of the physical plant and equipment;

798 (3) the discounted future revenue stream generated from the
799 customer base; and

800 (4) the remaining useful life of the Company's Distribution
801 System within the City of Austin.

802 19.4 If there is a greater than five percent difference between the proposed
803 valuations in the Parties appointed appraisers' written proposed decisions, then
804 within 45 days after the submission of the proposed decisions, the third appraiser
805 must file with the City and the Company a written proposed decision on the
806 appraised value, including detailed written findings explaining the basis of the

Council Meeting Backup: May 28, 2026

807 proposed valuation and including the factors detailed in Section 19.3 (B) above. The
808 final appraised value shall be equal to the average of the three proposed valuations.
809 However, if any one of the three proposed valuations is higher or lower than one or
810 both of the other two proposed valuations by more than 10 percent, the final
811 appraised value shall be equal to the average of the other two proposed valuations.

812 19.5 Closing shall be held at a mutually agreeable location 120 days after
813 the appraisers file the final written proposed decision. At the closing, the City shall
814 pay the cash price stated in the final appraisal value.

815 19.6 The time periods specified in this section may be modified or extended
816 only by a writing duly authorized and executed by both the City and the Company.
817 Such authorization shall not be unreasonably withheld, provided that any such
818 request shall be made in writing and received by the other party within a reasonable
819 time prior to the expiration of the time period sought to be extended.

820 19.7 In the event the City decides not to purchase the Company's Distribution
821 System or the City is financially unable to close the purchase of the Company's
822 Distribution System within the time set forth herein, the City's purchase right shall be
823 deemed waived and the Company may recover from Customers its costs and expenses
824 expended in preparing for the purchase transaction, subject to the City's review of such
825 costs and expenses for reasonableness.

826 **SECTION 20. Severability.**

827 20.1 If any word, phrase or one or more provisions of this Franchise are held
828 to be void, voidable, or unenforceable by a court of competent jurisdiction in a final
829 judicial action, the word(s), phrase(s), or provision(s) are severed from the remaining
830 provisions of the Franchise. Such a word, phrase, or provision shall not affect the
831 legality, validity, or constitutionality of the remaining portions of this Franchise. The
832 City and the Company enter into this Franchise and each of its provisions regardless
833 of any provision that is held to be illegal, invalid, or unconstitutional, provided,
834 however, that the City and the Company each reserves the right to terminate the
835 agreement authorized by this Franchise Ordinance if any provision set out herein is
836 held to be illegal, invalid or unconstitutional.

837 20.2 Nothing herein contained shall be construed as granting any exclusive
838 franchise or right.

839 **SECTION 21. Interpretation.**

840 The use of captions or headings for the various sections of this Ordinance are

841 for convenience of parties only and do not reflect the intent of the parties. The rule
842 of interpretation to resolve ambiguities in a contract against the party drafting such
843 contract shall not apply to this Franchise.

844 **SECTION 22. Dispute Resolution.**

845 22.1 If a dispute arises out of or related to the Franchise, or the breach thereof,
846 the parties agree to negotiate prior to prosecuting a suit for damages. However, this
847 section does not prohibit the filing of a lawsuit to toll the running of a statute of
848 limitations or to seek injunctive relief. Either party may make a written request for a
849 meeting between representatives of each party within 14 calendar days after receipt
850 of the request or such later period as agreed by the parties. Each party shall include,
851 at a minimum, one senior level individual with decision-making authority regarding
852 the dispute. The purpose of this and any subsequent meeting is to attempt, in good
853 faith, to negotiate resolution of the dispute. If within 30 calendar days after such
854 meeting, the parties have not succeeded in negotiating a resolution of the dispute,
855 they will proceed directly to mediation as described below. Negotiation may be
856 waived by a written agreement signed by both parties, in which event the parties may
857 proceed directly to mediation as described below.

858 22.2 If the efforts to resolve the dispute through negotiation fail, or the parties
859 waive the negotiation process, the parties may select, within 30 calendar days, a
860 mediator trained in mediation skills to assist with resolution of the dispute. Should
861 they choose this option, the City and the Company agree to act in good faith in the
862 selection of the mediator and to give consideration to qualified individuals nominated to
863 act as mediator. Nothing in the Franchise prevents the parties from relying on the skills
864 of a person who is trained in the subject matter of the dispute or a contract interpretation
865 expert. If the parties fail to agree on a mediator within 30 calendar days of initiation of
866 the mediation process, the mediator shall be selected by the Travis County Dispute
867 Resolution Center (DRC).

868 22.3 The parties agree to participate in mediation in good faith for up to 30
869 calendar days from the date of the first mediation session. The City and the
870 Company will equally share costs of the mediator selected to mediate the dispute.

871 **PART 2.** In compliance with state law and Article XI (*Franchises and Public Utilities*),
872 Section 3 (*Ordinance Granting Franchise*) of the City Charter, the Company shall bear
873 the expense of publishing required notice of this Ordinance in a newspaper of general
874 circulation in the City within five days after each of the three readings of this Ordinance.

875 **PART 3.** If any of the terms of this ordinance conflict with the City Charter, the terms of
876 the Charter prevail.

